



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

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San Francisco, CA 94105-3901

2/12/93

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FEB - 9 1993

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable John McCain
United States Senator
111 Senate Office Building
Washington, D.C. 20510

Dear Senator McCain:

Thank you for your letters of January 11, 1993 and January 14, 1993 to former Administrator Reilly concerning the Tri-City Landfill located on the Salt River Pima-Maricopa Indian Reservation near Phoenix, Arizona. I have been requested to respond to your concern regarding the damage sustained by the landfill during the recent floods on the Salt River. Since the flood, my office has been in frequent contact with the Corps of Engineers and the Arizona Department of Environmental Quality (DEQ) discussing steps that can be taken to protect the landfill from further damage and to address cleanup of the Salt River. I also understand that our respective staff have been in contact via telephone several times over the past few months. We have enclosed a chronology of our actions on this issue for the past year.

Shortly after the flood waters damaged the landfill, our emergency response team visited the site. After examining the washed-out portion of the landfill and the debris in the river, they found no evidence of hazardous waste in the damaged portion of the landfill. We have participated in meetings with the Indian community, the Corps of Engineers, the Arizona DEQ and the Maricopa County Flood Control District, at which the Corps of Engineers has reinforced its commitment to lead the regulatory efforts to address the bank-stability and closure needs of this site. I understand that the Indian community has completed construction of a rip-rap berm to protect the eroded portion of the landfill from further damage. The community has also submitted plans to the Corps of Engineers describing the steps they plan to take to assure permanent protection of the landfill against any future floods. The plan includes further reinforcement of the protective rip-rap and construction of a flood channel in the bed of the Salt River. The Corps will evaluate the adequacy of these plans.

We will also seek to ensure that the landfill conforms with applicable regulations governing operation and closure of solid waste landfills by working with the Inter Tribal Council of Arizona and supporting solid waste program development activities on the reservation. Both the Corps of Engineers and EPA's enforcement authorities in this situation are governed by our respective policies regarding Tribes; a copy of the EPA policy

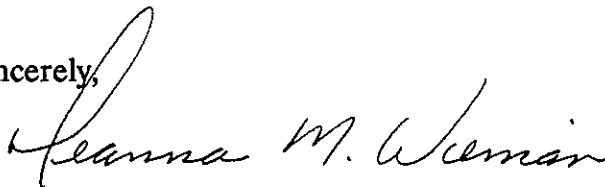
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is enclosed for your review. After the new RCRA solid waste regulations take effect in October, 1993, EPA will have clearer jurisdiction over the closure and post-closure care of solid waste sites. Thus, we expect to have a long-term role in overseeing some aspects of the Tri-Cities landfill.

Concerning cleanup of the Salt River, I understand that the Federal Emergency Management Agency is prepared to provide financial assistance for this effort. At present, we understand Maricopa County Flood Control District is meeting with the cities to apportion responsibility for trash removal along the river. We will lend assistance to the Corps and the Arizona DEQ, as needed, to ensure a safe and thorough clean up. With regard to other Superfund sites along the Salt River (Indian Bend Wash and 19th Avenue Landfill), we are not aware of any current need for a Federal response. Please let us know of any specific problems which may come to your attention. Other sites along the Salt River fall under the jurisdiction of the Arizona DEQ.

If I can be of further assistance, please call me or my Congressional Liaison Officer, Catherine Roberts, at (415) 744-1560.

Sincerely,



 John C. Wise
Acting Regional Administrator

Enclosure

cc: Major Robert N. Van Der Like, U.S. Army Corps of Engineers

Actions taken by EPA Region 9 since January 1992 regarding Tri-Cities Landfill

January 16, 1992

A meeting was held to discuss possible EPA actions and information was exchanged regarding the activities of other governmental entities. Representatives of Region 9 Water Management Division (WMD)-Wetlands and NPDES, Hazardous Waste Management Division (HWMD)-Solid Waste, Office of Region Council (ORC), and Office of External Affairs (OEA) participated.

January 19, 1992

Bill Wilcox, EPA Arizona Tribal Liaison - Senior Environmental Employee (SEE), faxed his report of 1/14/92 trip to Salt River Pima-Maricopa Indian Community (SRPMIC) to Region 9. SEE's are employees assisting the EPA under a contract with the National Council of Senior Citizens. Mr. Wilcox was requested by EPA's national Indian Program Coordinator to undertake a review of the Tri-Cities Landfill situation. Mr. Wilcox is a resident of Scottsdale, Arizona.

Mr. Wilcox's major findings were: SRPMIC stated that there was no discharge from the landfill and the debris was from "midnight dumping" upstream, there is a need to improve monitoring on the reservation to stop "midnight dumping;" SRPMIC has a need to begin developing a solid waste management program, including a recycling program; there appears to be no ground water contamination from the landfill; a closure plan for the landfill, including cost estimates, must be developed; and that while there may be enforcement options under Clean Water Act (CWA) § 402/404, intensive technical assistance to SRPMIC and the Cities would be more beneficial.

January 23, 1992

Region 9 had a conference call with Army Corps of Engineers (COE) to receive an update on steps taken to date and to discuss next steps.

January 27, 1992

Region 9 representatives from Wetlands, Solid Waste sections and the Office of Pacific Islands and Native American Programs (OPINAP) met with concerned parties at SRPMIC. COE assumed lead federal agency responsibilities per CWA §404. SRPMIC provided OPINAP with a summary of data collected from wells in the vicinity of Tri-Cities landfill. 1/31/92, OPINAP forwarded the well data to HWMD for review of potential hazardous releases that would affect the Salt River or the ground water.

February 1992

Region 9 preparation for 2/28/92 meeting at SRPMIC - the tribe was involved in the coordination.

February 19, 1992

Letter from Don Clay, Office of Solid Waste and Emergency Response, to Arizona State Rep William Mundell stated agency position on Solid Waste program authorization; Region 9 reviewing possible CWA §402/404 violations; Region 9 coordination with other federal agencies and parties, including COE and Bureau of Indian Affairs (BIA) - COE assumed lead.

February 28, 1992

Meeting at SRPMIC attended by EPA (HWMD-Solid Waste, WMD, OEA-OPINAP); COE; Arizona Department of Environmental Quality (ADEQ); Maricopa County Flood Control District; Cities of Mesa, Tempe, and Scottsdale; representative for Arizona Attorney General; representatives for U.S. Senators DeConcini and McCain; and representatives for SRPMIC. 3/6/92 Region 9 letter transmitted a summary of the meeting issues and action items for tribal comment. Two major points: COE designated the parts of the Landfill that were within waters of the U.S.; the Cities and the tribe discussed re-evaluating "tipping fees" to address future landfill activities.

March 20, 1992

Letter drafted by Region 9 for Administrator Reilly was sent to Sen. McCain, responding to Sen. McCain's 1/8/92 inquiry.

April 1, 1992

Letter from Region 9 to U.S. Rep. Jon Kyl responding to his 3/16/92 inquiry regarding Federal authorities on Indian lands, in particular at Tri-Cities Landfill.

April 21, 1992

Region 9 responded to the Notice of Intent to File Suit by Don't Waste Arizona pursuant to §7002 of Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6972.

****Inter Tribal Council of Arizona (ITCA) Multi-Media Assistance****

March 31, 1992

Region 9 awarded ITCA a \$500,000 FY 1992 Multi-Media Assistant Agreement for their Integrated Waste Management Planning Project.

July 31, 1992

SRPMIC submitted a \$50,000 proposal to ITCA to fund "Design of Closure and Bank Protection of the Salt River Adjacent to Two Landfill Areas."

November 9, 1992

Region 9 initiated a conference call to Sen. McCain's office. Region 9 Congressional Liaison, representatives of the Solid Waste section, and OPINAP spoke with John Raidt regarding the Region's decision not to fund SRPMIC's proposal.

November 10, 1992

Region 9 sent a letter to ITCA explaining the Region's determination not to fund SRPMIC's "Design of Closure and Bank Protection of the Salt River Adjacent to Two Landfill Areas;" and stating support for funding to SRPMIC for tribal Solid Waste Management Program development.

October 1, 1992

Region 9 received a copy of 9/22/92 letter from COE to SRPMIC requesting confirmation that the tribe had initiated final corrective measures design work per tribe's 6/18/92 letter to COE.

November 20, 1992

Region 9 received a copy of 11/17/92 letter from COE to SRPMIC reiterating request for confirmation that the tribe had initiated final corrective measures design work per tribe's 6/18/92 letter to COE.

December 15, 1992

Region 9 Solid Waste section briefed HWMD regarding the status of Tri-Cities Landfill.

January 8, 1993

Region 9 received fax from Ed Fox, Director, ADEQ expressing concern about Tri-Cities Landfill. ADEQ stated that they will explore their legal options to expedite actions to bring the landfill into compliance.

January 11, 1993

Region 9 WMD met with COE and discussed Tri-Cities Landfill. Major Points: COE reaffirmed its role as lead federal agency; COE stated that it will review its enforcement options.

January 12, 1993

At the request of ADEQ Region 9 sent Emergency Response Section, On-Scene-Coordinator (OSC), Dan Shane along with US Coast Guard & a Technical Assistance Team to Phoenix, AZ to survey potential hazards associated with the Salt River flood impact on the Tri-Cities Landfill.

January 20, 1993

Region 9 received Congressional inquiry from Sen. McCain requesting EPA to investigate the situation thoroughly and develop an enforceable solution that will prevent future polluting of the river by this landfill.

January 22, 1993

Pollution Report submitted by OSC Dan Shane regarding 1/12-14/93 visit to SRPMIC. Findings: no refuse that resembled hazardous waste materials, industrial waste or household garbage was detected in the exposed areas at the edge of the landfill; there was no

evidence of hazardous substances such as drums, containers, sludges, leachates, oil sheens, or discolored soils; tribe was constructing a rock rap-wall into the river to both divert the flow of the river away from the landfill and shore up the toe of the landfill; COE was on-scene monitoring the construction activities.

EPA POLICY FOR THE ADMINISTRATION OF ENVIRONMENTAL PROGRAMS ON INDIAN RESERVATIONS

INTRODUCTION

The President published a Federal Indian Policy on January 24, 1983, supporting the primary role of Tribal Governments in matters affecting American Indian reservations. That policy stressed two related themes: (1) that the Federal Government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal Governments on a "government-to-government" basis.

The Environmental Protection Agency (EPA) has previously issued general statements of policy which recognize the importance of Tribal Governments in regulatory activities that impact reservation environments. It is the purpose of this statement to consolidate and expand on existing EPA Indian Policy statements in a manner consistent with the overall Federal position in support of Tribal "self-government" and "government-to-government" relations between Federal and Tribal Governments. This statement sets forth the principles that will guide the Agency in dealing with Tribal Governments and in responding to the problems of environmental management on American Indian reservations in order to protect human health and the environment. The Policy is intended to provide guidance for EPA program managers in the conduct of the Agency's congressionally mandated responsibilities. As such, it applies to EPA only and does not articulate policy for other Agencies in the conduct of their respective responsibilities.

It is important to emphasize that the implementation of regulatory programs which will realize these principles on Indian Reservations cannot be accomplished immediately. Effective implementation will take careful and conscientious work by EPA, the Tribes and many others. In many cases, it will require changes in applicable statutory authorities and regulations. It will be necessary to proceed in a carefully phased way, to learn from successes and failures, and to gain experience. Nonetheless, by beginning work on the priority problems that exist now and continuing in the direction established under these principles, over time we can significantly enhance environmental quality on reservation lands.

POLICY

In carrying out our responsibilities on Indian reservations, the fundamental objective of the Environmental Protection Agency is to protect human health and the environment. The keynote of this effort will be to give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands. To meet this objective, the Agency will pursue the following principles:

1. THE AGENCY STANDS READY TO WORK DIRECTLY WITH INDIAN TRIBAL GOVERNMENTS ON A ONE-TO-ONE BASIS (THE "GOVERNMENT-TO-GOVERNMENT" RELATIONSHIP), RATHER THAN AS SUBDIVISIONS OF OTHER GOVERNMENTS.

EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as political subdivision of States or other governmental units.

2. THE AGENCY WILL RECOGNIZE TRIBAL GOVERNMENTS AS THE PRIMARY PARTIES FOR SETTING STANDARDS, MAKING ENVIRONMENTAL POLICY DECISIONS AND MANAGING PROGRAMS FOR RESERVATIONS, CONSISTENT WITH AGENCY STANDARDS AND REGULATIONS.

In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

3. THE AGENCY WILL TAKE AFFIRMATIVE STEPS TO ENCOURAGE AND ASSIST TRIBES IN ASSUMING REGULATORY AND PROGRAM MANAGEMENT RESPONSIBILITIES FOR RESERVATION LANDS.

The Agency will assist interested Tribal Governments in developing programs and in preparing to assume regulatory and program management responsibilities for reservation lands. Within the constraints of EPA's authority and resources, this aid will include providing grants and other assistance to Tribes similar to that we provide State Governments. The Agency will encourage Tribes to assume delegable responsibilities, (i.e. responsibilities which the Agency has traditionally delegated to State Governments for non-reservation lands) under terms similar to those governing delegations to States.

Until Tribal Governments are willing and able to assume full responsibility for delegable programs, the Agency will retain responsibility for managing programs for reservations (unless the State has an express grant of jurisdiction from Congress sufficient to support delegation to the State Government). Where EPA retains such responsibility, the Agency will encourage the Tribe to participate in policy-making and to assume appropriate lesser or partial roles in the management of reservation programs.

4. THE AGENCY WILL TAKE APPROPRIATE STEPS TO REMOVE EXISTING LEGAL AND PROCEDURAL IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS ON RESERVATION PROGRAMS.

A number of serious constraints and uncertainties in the language of our statutes and regulations have limited our ability to work directly and effectively with Tribal Governments on reservation problems. As impediments in our procedures, regulations or statutes are identified which limit our ability to work effectively with Tribes consistent with this Policy, we will seek to remove those impediments.

5. THE AGENCY, IN KEEPING WITH THE FEDERAL TRUST RESPONSIBILITY, WILL ASSURE THAT TRIBAL CONCERNS AND INTERESTS ARE CONSIDERED WHENEVER EPA'S ACTIONS AND/OR DECISIONS MAY AFFECT RESERVATION ENVIRONMENTS.

EPA recognizes that a trust responsibility derives from the historical relationship between the Federal Government and Indian Tribes as expressed in certain treaties and Federal Indian Law. In keeping with that trust responsibility, the Agency will endeavor to protect the environmental interests of Indian Tribes when carrying out its responsibilities that may affect the reservations.

6. THE AGENCY WILL ENCOURAGE COOPERATION BETWEEN TRIBAL, STATE AND LOCAL GOVERNMENTS TO RESOLVE ENVIRONMENTAL PROBLEMS OF MUTUAL CONCERN.

Sound environmental planning and management require the cooperation and mutual consideration of neighboring governments, whether those governments be neighboring States, Tribes, or local units of government. Accordingly, EPA will encourage early communication and cooperation among Tribes, States and local governments. This is not intended to lend Federal support to any one party to the jeopardy of the interests of the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals and neighbors often serves the best interests of both.

7. THE AGENCY WILL WORK WITH OTHER FEDERAL AGENCIES WHICH HAVE RELATED RESPONSIBILITIES ON INDIAN RESERVATIONS TO ENLIST THEIR INTEREST AND SUPPORT IN COOPERATIVE EFFORTS TO HELP TRIBES ASSUME ENVIRONMENTAL PROGRAM RESPONSIBILITIES FOR RESERVATIONS.

EPA will seek and promote cooperation between Federal agencies to protect human health and the environment on reservations. We will work with other agencies to clearly identify and delineate the roles, responsibilities and relationships of our respective organizations and to assist Tribes in developing and managing environmental programs for reservation lands.

8. THE AGENCY WILL STRIVE TO ASSURE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS.

In those cases where facilities owned or managed by Tribal Governments are not in compliance with Federal environmental statutes, EPA will work cooperatively with Tribal leadership to develop means to achieve compliance, providing technical support and consultation as necessary to enable Tribal facilities to comply. Because of the distinct status of Indian Tribes and the complex legal issues involved, direct EPA action through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion.

In those cases where reservation facilities are clearly owned or managed by private parties and there is no substantial Tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected Tribal Government, but will otherwise respond to noncompliance by private parties on Indian reservations as the Agency would to noncompliance by the private sector elsewhere in the country. Where the Tribe has a substantial proprietary interest in, or control over, the privately owned or managed facility, EPA will respond as described in the first paragraph above.

9. THE AGENCY WILL INCORPORATE THESE INDIAN POLICY GOALS INTO ITS PLANNING AND MANAGEMENT ACTIVITIES, INCLUDING ITS BUDGET, OPERATING GUIDANCE, LEGISLATIVE INITIATIVES, MANAGEMENT ACCOUNTABILITY SYSTEM AND ONGOING POLICY AND REGULATION DEVELOPMENT PROCESSES.

It is a central purpose of this effort to ensure that the principles of this Policy are effectively institutionalized by incorporating them into the Agency's ongoing and long-term planning and management processes. Agency managers will include specific programmatic actions designed to resolve problems on Indian reservations in the Agency's existing fiscal year and long-term planning and management processes.



William D. Ruckelshaus

EPA Indian Policy regarding SRPMIC Tri-Cities Landfill

Pursuant to EPA's 1984 Indian Policy, when violations are detected at a facility owned or managed by a tribal government, EPA can provide technical support and consultation to the extent possible to enable the facility to comply with the Resource Conservation and Recovery Act (RCRA).

New regulations (40 CFR 258) governing operations of solid waste disposal facilities will take effect on October 9, 1993. The new regulations address location, design, operation, ground water monitoring, corrective action, closure, post-closure care, and financial assurance requirements for municipal solid waste landfills. Owners and operators of these facilities are responsible for achieving compliance with the new federal criteria by the effective date of these requirements.

Although EPA currently has no direct enforcement authority for the existing or new solid waste regulations on Indian lands or State lands, these requirements may be enforced through the citizen suit provision of Section 7002 of RCRA.

In Region 9, we have been actively assisting both State and Tribal regulators and landfill owners and operators to gain a better understanding of these new requirements. The Region has recently sponsored several two-day solid waste conferences to discuss waste landfill regulations and offer technical guidance to improve the overall operation of all landfills. This past July 6, 1992 a representative from Region 9 Solid Waste Section presented the new regulations to the tribes belonging to the Inter Tribal Council of Arizona. Representatives of the Salt River Pima-Maricopa Indian Community were in attendance at this meeting.

In addition, if the Salt River Pima-Maricopa Indian Community decides to develop their own comprehensive regulatory program, we intend to work directly with the tribe.

I trust this information will be helpful to you.

From OUR LETTER }